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SUPREME COURT OF THE UNITED STATES

October Term, 1936.

No. 227

JOSE MATOS, *Petitioner*

vs.

ALONSO BROTHERS, *Respondent*

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

✓FRANCIS H. DEXTER
San Juan, P. R.
Counsel for Respondent

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PRELIMINARY STATEMENT

Respondent is a civil society with juridical entity. (People of Puerto Rico vs, Russell & Co., 288 U. S. 476).

The affirmation in the Petition (Page 3):—"It is admitted that any action for damages for breach of warranty or for the redhibition (rescission) of the contract had prescribed prior to the bringing of the action",—must be understood as not being an admission by Respondent that the action in this case is an action for damages for breach of warranty or for redhibition (rescission) of a valid contract.

The contention of Respondent, which was sustained by the majority decision of the Circuit Court of Appeals, is that the contract in question was null and void, that the action is not for rescission, but for nullity (inexistence), and that therefore it is not subject to the special limitation relating to redhibitory actions based on valid contracts.

The Penal Code of Puerto Rico in force at the time of the contract and sale declared the selling, use, and exposing of cattle with infectious or contagious disease to be a crime. (Sections 351, 352, 356 Penal Code and Act of March 14, 1907, cited in opinion of Circuit Court of Appeals, (page 56 of Record).

Justice Bingham, in his dissenting opinion held that because of these provisions of the Penal Code and of section 1238 of the Civil Code providing that things "out of the commerce of man" i. e. illicit or forbidden, can not be made the objects of commerce, there was no valid contract which could be rescinded, though he sustained the prescription of forty days applicable to redhibitory actions, which are fundamentally actions for rescission in the civil law.

I

The Reasons Relied upon for the Allowance of the Writ are not within those established by this Court to permit of Review by Certiorari

All questions of law presented by the Petition arise out of the interpretation and effect of a contract of sale of a herd of cows, most of which were found by the purchaser (Respondent) to be diseased, and the purchaser's remedy to relief from the vendor (Petitioner), such a contract being expressly declared by the Civil Code of Puerto Rico to be null and void. (See Section 1397 which appears on page 9 herein.)

These are not the "special and important reasons"

which must be the basis for review by certiorari by this Court of a judgment of the Circuit Court of Appeals, under Rule 38, paragraph 5 of this Court and as strictly established by its decisions.

It must be apparent to the Court that the questions of civil law which are presented involve no subtle or special learning and are really the expression of equivalent principles of American jurisprudence relating to the simple subject of sales of personal property.

The Petition fails to meet the test established by the decisions in the following leading cases:

> (2) While this power [to grant certiorari] is coextensive with all possible necessities, and sufficient to secure to this court final control over the litigation in all the courts of appeal, it is a power which will be sparingly exercised, and only when the circumstances of the case satisfy this court that the importance of the question involved, the necessity of avoiding conflict between two or more Courts of Appeals, or between Courts of Appeal and the courts of a State, on some matter affecting the interest of the nation, in its internal or external relations, demands such exercise."
>
> Forsyth vs. Hammond
> 166 U. S. 506
> See also Hamilton Brown Shoe Co. vs. Wolf Bros. & Co., 240 U. S. 251

> (2) "The jurisdiction to bring up cases from the Circuit Court of Appeals by certiorari was given for the two purposes of securing uniformity of decision in the circuits and of having questions of importance decided by this court when desirable in the public interest; not for the purpose of giving the defeated party another hearing".
>
> Magnum vs. Coty
> 262 U. S. 159

Referring to the Act of March 3, 1891 creating the Circuit Courts of Appeals, etc., this court in In re Woods, 143 U. S. 202, declared in its opinion (page 206):

> "But in the interest of jurisprudence and uniformity of decision..... provision was made under section 6 for such supervision on our part as would tend to avert diversity of judgments and guard against inadvertence of conclusion in controversies involving weighty and serious matters."

The Petition fails to present reasons to meet the requirements of this Court for the exercise of its discretion as circumscribed by Rule 38.

Having in view the limitation which the court has imposed upon the exercise of its discretion in order to avoid its becoming in every case of error a second court of last-resort, we will consider the alleged reasons upon which the Petition rests as they appear therein, (Page 5, Petition) and in the Specification of Errors (page 10, Petition) relied upon in connection therewith.

Reason (a)

> "Because the prevailing opinion of the Circuit Court of Appeals has reversed the decision of the Supreme Court of Puerto Rico upon matters relating wholly to the construction and application of local statutes of Spanish origin, which construction and application were not clearly wrong". (Petition, page 5).

The above reason must be considered in connection with Specification of Errors 1 (page 10, Petition) which is to the same effect.

The foregoing reason and specification depend apriori, upon the test of their meeting the requirements of the decisions and Rule 38 of this court as to the special and important character of the questions presented, a test which is not met by the assertion alone that the

matters related to the construction and application of local statutes of Spanish origin relating simply to sales of personal property. Certiorari as an incident to appeals from Puerto Rico cannot be treated by any different standard than if the petition for certiorari were presented as an incident to an appeal from a federal district within the United States to a Circuit Court of Appeals whose decision and judgment involved the construction and application of State statutes.

In this connection we do not think it improper to observe that an excessive deference should not be made to the decisions of the courts of Puerto Rico from the mere fact that they administer the civil law, to a more or less extent.

The historical and legal facts are that at the present time the preponderating body of the law of Puerto Rico is of American origin. An examination of the decisions of the Supreme Court of Puerto Rico will disclose that in a majority of them provisions of the Civil Code and of the civil law have been determined by reference to and reliance upon decisions of American courts upon the same principles of law and subject matter of the litigation, recognized under a different nomenclature.

Up to the present time this tendency on the part of the bench and bar has had the purpose and effect of interpreting the various provisions of the civil law involved in each suit in the light of American laws and jurisprudence and to adapt the civil law thereto.

There is no fetish concerning the civil law which works against an Anglo-Saxon student.

The able lawyer "of counsel" for Petitioner, during his limited residence in Puerto Rico, acquired a mastery of the civil law which has brought him success and local fame.

The distinguished judge of the Supreme Court of Puerto Rico who wrote the opinion of the court, though

a native of the United States, has made a splendid record as student and expounder of the civil law.

In the twenty years, more or less, during which the Circuit Court of Appeals for the First Circuit has been invested with appellate jurisdiction from the Supreme Court of Puerto Rico its judges must be presumed to have qualified themselves to intelligently perform the duties imposed upon them by Congress of interpreting the civil law, as well as the laws of Puerto Rico of American origin.

There is nothing sacrosanct about the civil law which prevents an Anglo Saxon student from becoming proficient in it. He finds in its principles an equivalent in American jurisprudence and corpus juris and that the principles of the civil law are simply familiar rules of these, although expressed in a different nomenclature.

Petitioner invokes the rule established by this Court and by the Circuit Court of Appeals for the First Circuit that decisions of the courts of Puerto Rico upon matters relating wholly to the construction and application of local laws of Spanish origin should be respected, *unless such decisions are clearly wrong.* We accept this rule with the understanding that it is based, not upon the origin of the law but on the circumstance that local law in Puerto Rico relating to real estate and certain fundamental rights and obligations are matters of local regulation. Sales of personal property are not within this rule.

To this extent deference is given to local decisions, but when these are clearly wrong they are reviewed and reversed. The courts of Puerto Rico, though learned and usually correct in their interpretation and application of the civil law, are not infallible.

Reason (b)

"Because the prevailing opinion of the Circuit Court of Appeals has decided important questions

of local law in a way probably in conflict with applicable local decisions".
(page 5, Petition).

This reason is an attempt to invoke the exercise of the discretion of this Court under subdivision b of Rule". 38.

Aside from the fact that this specification of errors fails to disclose that the alleged errors involved special and important questions, not only to Petitioner but to the public of Puerto Rico and of the United States in general. Petitioner cites only one case of the Supreme Court of Puerto Rico, other than the decision in this case, to establish the alleged conflict created by the decision of the Circuit Court of Appeals complained of, whereas four American cases are cited and relied upon.

The case of Schluter vs. Fernandez, 30 P. R. R. 117, the lone case cited by Petitioner, really supports the decision of the Circuit Court of Appeals upon the question of prescription involved in an action for the recovery of the price of hams which were discovered by the purchaser after the sale to be tainted.

In the opinion of the Supreme Court of Puerto Rico in favor of Petitioner the court did not cite, much less rely upon, a single decision of its own court or of the Supreme Court of Spain in support of its reasoning upon the essentially civil, or Roman, features of redhibitory actions; while four cases from Louisiana were cited and relied upon.

The Court based its reasoning and decision only upon treatises (Comentarios) of Spanish writers on the civil law, amongst whom there are conflicting opinions upon the subject of the redhibitory action referred to in sections of the Spanish Code, the equivalents of corresponding sections of the Code of Puerto Rico, relied upon by Petitioner.

The Circuit Court of Appeals in the decision com-

plained of cited and relied upon a decision of the Supreme Court of Puerto Rico.

Viewing the reason under discussion from another angle we may, without impropriety and without offense to the courts of Puerto Rico, suggest that this Court in adopting Rule 38 and in order to carry out the spirit and purpose of the Circuit Court of Appeals Act had in mind the highest courts of the States;— not courts of unincorporated territories, when it used the terms "local law" and "local decisions".

In Downes vs. Bidwell, 182 U. S. 244 the Court in its opinion, page 259, following Scott vs. Jones, 5 How 393, and Miner's Bank vs. Iowa, 12 Howard 1, held:

> "Under the Judiciary Act permitting writs of error to the Supreme Court of a State where the validity of a *state statute* is drawn in question, an act of a territorial legislature was not within the contemplation of Congress".

Considering the difference of position and influence upon the shaping of American jurisprudence, between the highest courts of the States, which are sovereign powers, and the highest court of a territory, which is under the paramount sovereignty of the federal government ,it may not be presumed that the uniformity of decision desired and the conflict of decision sought to be avoided has relation to the decisions of territorial courts.

This suggestion may not be without relevance when there is considered the political status of Puerto Rico in relation to the United States, which relation is claimed at the present time by a considerable number of the inhabitants of the island and numerous influential members of the Congress to be indefinite and impermanent. If this be true this unincorporated territory is not embraced within the "American family" or the "American Empire" (Loughborough vs. Blake, 5 Wheaton 319, Downes vs. Bidwell, 182 U. S. 244).

Reason (c)

> "Because the prevailing opinion of the Circuit Court of Appeals has decided important questions of general law in a way probably untenable and in conflict with the weight of authority".
> (page 6, Petition).

The explanation of this reason, immediately following, and Specification 3 (page 11, Petition) fail absolutely to disclose an important question of general law in which either the public of Puerto Rico or of the United States, or the jurisprudence of either, is specially interested.

The only question involved in this case and upon which its decision depends is whether Section 1397 of the Civil Code made absolutely void the contract in question, as its plain language requires and as held in the majority opinion of the Circuit Court of Appeals, and hence not subject to an action for rescission (redhibition), or whether it made the contract voidable only, and therefore, subject to such an action.

Section 1397 is as follows:

> "Animals and cattle suffering from contagious diseases shall not be the object of a contract of sale. Any contract made with regard to the same shall be void.
>
> A contract of sale of cattle and animals shall also be void, when the use or service for which they are acquired being stated, they are found to be useless therefor".

Specifications of error 4 and 5 present but ordinary and routine questions of procedure of special interest to no one but Petitioner, and both depend upon the granting of the writ and the finding of substantial error upon the other questions presented.

II

The Circuit Court of Appeals in Reversing the Decision of the Supreme Court of Puerto Rico and in Holding that the action of Respondent (Plaintiff) was not Redhibitory and was not barred by Prescription was a sound and sane interpretation of the Civil Code of Puerto Rico and of the Civil Law.

ARGUMENT.

We here consider Specification of Error 2: (Page 10, Petition)

> "In reversing the decision of the Supreme Court of Puerto Rico that Plaintiff's right of action was redhibitory and was barred by prescription".

Petitioner insists now, as he did below, that the action of Respondent (Plaintiff), as determined by the complaint, is a redhibitory action subject to conditions and obligations attached to this form of action.

Soon after the establishment of civil government in Puerto Rico its Legislature enacted a Code of Civil Procedure, adopting substantially, and literally to a large extent, the Code of California, which is similar to the various codes of procedure adopted in consonance with the so called "code system".

It contains the following provisions:

> "Section 103. The complaint must contain:
>
> 1. The title of the action, the name of the court and district in which the action is brought, and the names of the parties to the action.
>
> 2. A statement of the facts constituting the cause of action, in ordinary and concise language.
>
> 3. A demand of the relief which the plaintiff claims. If the recovery of money or damages be demanded, the amount thereof must be estated".
>
> Section 142. The court must, in every state of an

action, disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the parties, and no judgment shall be reversed or affected by reason of such error or defect".

It is admitted that of the 122 head of cattle purchased by Respondent from Petitioner 43 died of tuberculosis and 29 more were killed under orders of the Department of Health some time after the sale, March 1, 1929 and before the institution of the suit, December 12, 1929. It was natural and inevitable that the remaining fifty animals would develop the disease as a result of their contact with the rest of the herd.

Respondent's complaint was entitled "Inexistence of Contract and Cancellation of Entries".

It prayed the court to declare the nullity (inexistence) of the contract of sale and recovery of the consideration paid therefor. It was not an action for recission and redhibition.

Nullity and recission are irreconcilable.

Reference was made in the complaint to Section 1397 of the Civil Code only as the basis for declaring the contract of sale null and void.

Although the action and the complaint were simply to anull the contract of sale and to recover the consideration paid, with an offer prompted by good faith, to return the surviving cattle, they were treated and interpreted by the Supreme Court of Puerto Rico to be something else,—something which under the facts they could not legally be with due regard to the civil law.

Petioner seeks to apply to the action a prescription which does not exist, considering the circumstances of the case.

It is only by legal legerdemain that the transaction and the cause of action can be considered to be redhi-

bitory and subject to the prescription for that class of actions.

Resorting to the authority cited by the Supreme Court of Puerto Rico, the Spanish Juridical Encyclopedia of Seix, Volume XXVI, page 884, we find that redhibitory action (acción rehibitoria) is defined to be that "where a vendee demands the rescission of the contract".

Redhibition (redhibición) is defined as " the restitution of the price of a sale when, for defects of the thing sold, the contract is *rescinded*, the purchaser for this object employing the redhibitory action".

Escriche, the leading legal lexicographer of Spain, defines redhibition as follows:

> "The rescission of the sale which the purchaser may sue for obliges the vendor to restore the price and to retake possession of the thing sold, by reason of his deceit in having concealed some vice or burden which it (the thing) had:
> *Redhibitoria actis renditionem rescindit in totem, reddita revendita, et pretio recepto, rebusque omnibus restitutis in integrum*".

The essential and inseparable condition of a redhibitory action is the return by the purchaser to the vendor of the entire thing sold.

As section 1397 of the Code vitiated with nullity the Contract for diseased condition of any part of a herd or group of cattle sold, on the apparent theory that infectious or contagious disease in a part of the herd contaminated the whole herd, the effect of the section vitiated the herd as a unit.

Since the herd as sold could not, after the death and disease of a part, be returned as a unit there could not legally be performed the essential condition of a redhibitory sale and action, towit, the return of the unit (the thing sold).

The natural death and official slaughter of one part of the herd and the disease or contamination of the rest made it both practically and legally impossible for the purchaser to return all of the cattle.

Even as to the surviving cattle which had come in contact with the diseased cattle and had been exposed to infection by the latter,—Respondent was prevented by law from returning them. The offer by Respondent to do so was not made to establish the right to rescind the contract, in connection with a redhibitory action, but as a gesture of good faith in connection with his action to absolutely annul the contract.

As Section 1397 of the Code clearly made null and void the contract of sale and Respondent had a clear right to sue for the consideration paid by the single form of action required by the Code of Civil Procedure it could not be held subject to the prescription against a form of action which it never contemplated and could not institute with any hope of success.

The whole case of Petitioner resolves itself into a refinement of technicalities without the citation of authorities to show the justice of his position or to demonstrate a conflict between local cases and local law on the one side, and the decision of the Circuit Court of Appeals on the other.

CONCLUSION

We respectfully submit that the petition should be denied because no sufficient reason has been presented to justify the court to exercise its discretion to grant the writ and because, further, no error was committed by the Circuit Court of Appeals.

San Juan, Puerto Rico, September 1936.

FRANCIS H. DEXTER,
Counsel for Respondent.